IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3612 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MANUBHAI RADIABHAI PATEL

Appearance:

MR CC BHALJA for Petitioners

MR BH MEHTA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/09/98

ORAL JUDGEMENT

1. The State of Gujarat and Chief Conservator of forests, Baroda, challenges by this special civil application, the order dated 30-4-1986 of the Gujarat Civil Services Tribunal at Gandhinagar in Appeal No.401/83 under which the petitioners herein and the respondents therein were directed by the Tribunal to reinstate the respondent herein and the appellant therein in the services with full pay and allowances from the

date of his dismissal till reinstatement. He was further declared to be entitled to all the benefits of continuous service as if he had continued in service throughout the aforesaid period.

2. It is not in dispute that the respondent is an adivasi. It is also not in dispute that on the date on which he was served with the chargesheet for the misconduct committed by him enumerated in it he had 14 years service. The judgment of the Tribunal has been delivered on 30-4-1986 and this special civil application has been filed by the petitioners before this court on 7th July, 1988 i.e. after two years and four months. This delay of more than two years in filing of this special civil application has not been explained by the petitioners.

3. During the period from 1974 to 1976, the respondent was serving as beat guard under Deputy Conservator of Forests, Valsad. There were four villages under his beat namely, (i) Pandhardevi (ii) Eklara (iii) Astor, and (iv) Khataria. The respondent was served with the chargesheet dated 5-2-1976 by the Deputy Conservator of Forests, Valsad in which it is alleged that 637 valuable trees were illegally cut in his beat area but he reported cutting of 134 trees only and thus he failed in his duty and that he did not make proper inquiry about the illegal cutting of trees. The inquiry officer submitted his report on 5-1-1977 in which he found the respondent to be guilty of charges. Show cause notice was issued to him on 11-1-1977 to which the inquiry report was also enclosed and after considering his reply, under the order dated 4/6-8-1978 he was ordered to be removed from services. He filed an appeal before the Conservator of Forests which came to be dismissed on 27-10-1980. Then he approached to the Gujarat Civil Services Tribunal at Gandhinagar and under the impugned judgment, his appeal came to be allowed and relief as prayed for, as stated earlier, has been granted.

4. From the order of this court dated 14-2-1991, I find that this court declined to grant any interim relief in favour of the petitioners as the respondent had been reinstated in service. So the operation of the order and judgment of the Tribunal has not been stayed by this Court. This special civil application was admitted by this court on 13-7-1988, and on that date, this court has not considered it to be a fit case where any interim relief has to be granted in favour of the petitioners. So the fact is that in pursuance to the judgment of the Tribunal, the respondent has already been reinstated in

service and he is continuing in service for about more than ten years. Looking to the fact that he entered in the Government services in the year 1962, by this time, he would also have attained the age of superannuation.

5. Learned counsel for the petitioners made twofold contentions in this special civil application. Firstly it is contended that the illegal cutting of trees from Forest is a very serious thing and any default made by the respondent in reporting of the illegal cutting, has to be taken seriously and in fact it has been taken by the Department and as such the Tribunal should not have interfered with the order of the Disciplinary Authority as well as the appellate authority. Carrying this contention further, learned counsel for the petitioners contended that on proof of the charge that the respondent has not reported illegal cutting of trees to the extent what it was there, he has rightly been held to be negligent in discharging his duties and as it relate to the illegal cutting of forest, minimum penalty should have been of removal from services to which no exception could have been taken by the Tribunal. Second contention has been made that even if it is taken that the penalty of removal given to the respondent was considered to be excessive then too the Tribunal should have remanded the matter back to the disciplinary authority instead of substituting its own decision on this quantum of punishment in the case. A supplement argument has also been advanced that even if it is taken to be a case where the inquiry officer and disciplinary authority have committed any illegality in conducting the inquiry, appropriate course for the Tribunal would have been to send the matter back to the disciplinary authority for proceeding the inquiry from the stage where the same was found to be defective.

6. On the other hand, the counsel for the respondent supported the judgment of the Tribunal.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. Learned Tribunal in its impugned judgment has recorded following finding of facts.

(i) The panchnamas, on the basis of which number of trees and their value have been mentioned in the statements of imputations, have not been proved.

(ii) Even according to Inquiry officer, illegal cutting of 257 trees has been proved but the

value thereof is not proved.

(iii) The explanation given by the appellant has not been considered at any stage during the disciplinary proceedings against the appellant.

(iv) These explanations of the appellant were reasonable as it is proved by the departmental witnesses that appellant was sent on duty for planation work and work relating to detection of unauthorised cultivation of the forest land, and secondly, that between July and October grass must have grown and the illegal cutting could have been escaped the appellant's notice and this was supported by the departmental witnesses who have very fairly stated that non-detection could not be stated to be due to appellant's negligence.

9. This finding of facts aforesaid recorded by the Tribunal has not been challenged by the learned counsel for the petitioners. The respondent has proved in the departmental inquiry that he had been sent on duty for plantation work and work relating to detection of unauthorised cultivation of forest land for a considerable period and when he returned back to his beat in between July and October, grass certainly would have grown. There is some semblance of justification in his say that because of the growing of the grass he would not have detected the illegal cutting to the extent of what it is reported to be there.

10. There is another important aspect that as against 637 valuable trees reported to be illegally cut off, the inquiry officer found that 257 trees were illegally cut off. Admittedly 134 trees were reported. The inquiry officer and the disciplinary authority had gone in the matter with the charge of 637 valuable trees illegally cut off, and as against which, in the inquiry it is only proved that 257 trees were illegally cut off. The defence which has been given by the respondent was found correct to substantial extent and the Tribunal has not committed any error in reaching to the conclusion that it is not a fit case where the charges against the respondent are fully proved. It is not the case where the Tribunal has proceeded on the ground of some illegality committed by the inquiry officer and the disciplinary authority in conducting the inquiry, but has held that the charges as levelled against the respondent are not proved. It is true that the illegal cutting of trees from the forest is a very very serious matter and

on proof of the same it is equally true that the delinquent employee should have been dealt with severely. In this matter, this court directed the petitioners to submit the list of the officers in the hierarchy. The list has been submitted but most of the officers are no more in service for one or the other reason. It is though not the matter where on this larger issue this court should go but I am constrained to say here that such large scale illegal cutting of trees from the forest only at the behest of a beat guard is difficult to believe and accept. It is unfortunate that in this country in such a serious matter of illegal cutting of forest, the responsible officers of the Forest department felt contended to put all the blame on the lowest employee in the ladder. Be that as it may. The Tribunal, in the facts and circumstances of the present case, cannot be said to have acted arbitrary in setting aside the order of the disciplinary authority removing the respondent from services.

11. I find sufficient merits in the contention of the learned counsel for the petitioners that in the matter of what punishment should be given to the delinquent employee for the proved misconduct is solely in the discretion of the disciplinary authority or the appellate authority. Ordinarily in such matters, the Tribunal or the courts should be very very slow but nevertheless where the punishment which has been given to a delinquent employee/officer for proved misconduct is shocking to the judicial conscience of the court, certainly in such case, interference can be made by the court with the quantum of punishment. However, this point does not detain me much for the reason that the Tribunal has decided the matter on merits and it is not accepted that the charges as levelled against the respondent are proved. It is different matter that the Tribunal has also gone on the question of quantum of punishment instead of stopping itself at the stage where it held that the charges against the respondent are not proved.

12. Taking into consideration the totality of the facts of this case, I do not find any merits in the special civil application, which calls for interference of this court in the impugned judgment.

13. In the result, this special civil application fails and the same is dismissed. Rule discharged.

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